2964 No. 15049

United States
Court of Appeals
for the Ninth Circuit

HONOLULU OIL CORPORATION,
Appellant,

vs.

KATHARINE H. KENNEDY and MARK C. ELWORTHY, Executors of the Will of Frank Kennedy, deceased,
Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. —4-26-56

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States, Northern District of California, Southern Division

No. 30191

KATHARINE H. KENNEDY and MARK C. ELWORTHY, Executors of the Will of Frank Kennedy, deceased, Plaintiffs,

vs.

HONOLULU OIL CORPORATION, a corporation, Defendant.

COMPLAINT FOR ACCOUNTING

Plaintiffs above named, and each of them, complain of defendant above named, and for first cause of action allege:

I.

That Frank Kennedy died on October 4, 1946; that thereupon such proceedings were duly taken and had in the Superior Court of the State of California, in and for the County of San Mateo, that by an order of said court, duly given and made on November 7, 1946, plaintiffs Katharine H. Kennedy and Mark C. Elworthy, named therein as such, were duly appointed executors of the will of said Frank Kennedy, deceased, and that plaintiffs Katharine H. Kennedy and Mark C. Elworthy thereupon duly qualified as such executors and they, and each of them, ever since have been, and now are, the duly appointed, qualified, and acting executors of the will of Frank Kennedy, deceased; and that thereafter, and on July 7, 1950, the above entitled court

duly gave and made its order permitting plaintiffs Katharine H. Kennedy and Mark C. Elworthy, as such executors of the will of said Frank Kennedy, deceased, to bring this action on behalf of the estate of Frank Kennedy, deceased.

II.

That at all times herein mentioned defendant Honolulu Oil Corporation has been, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

III.

That Frank Kennedy was, during his lifetime, and plaintiffs Katharine H. Kennedy and Mark C. Elworthy, and each of them, are, and at all times herein mentioned were, citizens of the State of California; that defendant Honolulu Oil Corporation, is a citizen of the State of Delaware; and that the amount in controversy in this action exceeds $3,000.00, exclusive of interest and costs.

IV.

That on January 6, 1927, Frank Kennedy was the owner, holder, and in possession of:

(a) all that certain lot, piece, or parcel of land situate in the County of Fresno, State of California, bounded and described as follows, to-wit:

The South West Quarter (SW¼) of Section Twenty-two (22), Township Twenty-one (21) South, Range Seventeen (17), East, M.D.B. & M.

(b) U. S. Oil and Gas Prospecting Permit bear-

ing Serial No. Visalia 09551, issued to Thomas M. Crum by the U. S. General Land Office, Department of the Interior, under date of May 28, 1921, and subsequently transferred, by mesne assignments, to Frank Kennedy; which said U. S. Oil and Gas Prospecting Permit was subsequently renumbered "Sacramento 019438", and covered the following described land located in the County of Fresno, State of California, to-wit:

The South half (S½) and the Northwest quarter (NW¼) of Section 18; all of Sections 20, 28 and 30; and the Northeast quarter (NE¼) of Section 32, Township 21 South, Range 17 East, M.D.B. & M., containing 2556.58 acres, more or less.

V.

That on or about January 6, 1927, Frank Kennedy entered into an arrangement of co-adventure with Kettleman Oil Corporation (sometimes referred to herein as Kettleman Oil Corporation, Ltd.) for the exploration, development, and operation of lands owned or controlled by each of them for oil and gas, including the lands of Frank Kennedy referred to in paragraph IV of this complaint; which said arrangement was, and is, embodied primarily in the following documents executed by said co-adventurers in such connection:

(a) On January 6, 1927, Frank Kennedy deeded and transferred to Kettleman Oil Corporation, as his co-tenant, a portion of his right, title, and interest in and to the land described in paragraph IV(a) of this complaint, so that, from and after

said date, Frank Kennedy became, and ever since has been, and his estate now is, a co-adventurer and co-tenant in said lands with Kettleman Oil Corporation and its successors in interest therein; a copy of his said deed, with reservation unto himself, being attached hereto, marked "Exhibit A", and incorporated by reference.

(b) On January 6, 1927, Frank Kennedy assigned to Kettleman Oil Corporation, as his co-tenant, a portion of his right, title, and interest in and to said U. S. Oil and Gas Prospecting Permit referred to in paragraph IV(b) of this complaint, and in and to the lands thereby covered, so that, from and after said date, Frank Kennedy became, and ever since has been, and his estate now is, a co-adventurer and co-tenant in said lands with Kettleman Oil Corporation and its successors in interest therein; a copy of his said assignment, with reservation unto himself "running with the said lands", being attached hereto, marked "Exhibit B", and incorporated by reference;

(c) On January 6, 1927, Frank Kennedy entered into an "overriding royalty agreement" with Kettleman Oil Corporation, which said agreement was amended and supplemented on December 6, 1928, whereunder said Kettleman Oil Corporation sold, assigned, and transferred to Frank Kennedy overriding royalties from all oil and gas produced from lands referred to therein, so that, from and after said date, Frank Kennedy became, and ever since has been, and his estate now is, a co-adventurer in said lands with Kettleman Oil Corporation and its

successors in interest therein; copies of said agreement and supplement thereto being attached hereto, marked "Exhibit C", and "Exhibit D", respectively, and incorporated by reference.

(d) On January 6, 1927, Frank Kennedy entered into an "operating agreement" with Kettleman Oil Corporation wherein and whereunder said Kettleman Oil Corporation, and its successors in interest, as co-adventurer and co-tenant aforesaid, agreed, inter alia, to explore, exploit, and develop the lands covered by said U. S. Oil and Gas Prospecting Permit referred to in paragraphs IV(b) and V(b), supra; a copy of said agreement being attached hereto, marked "Exhibit E" and incorporated by reference.

VI.

That thereafter, and on March 9, 1929, and in furtherance of said arrangement of co-adventure, Kettleman Oil Corporation entered into an agreement with Pacific Western Oil Company, wherein and whereunder Pacific Western Oil Company agreed, as participating co-tenant and co-adventurer, to perform certain of the drilling and other obligations of Kettleman Oil Corporation as co-tenant and co-adventurer with Frank Kennedy; that pursuant thereto Kettleman Oil Corporation made the following transfers, to-wit:

(a) On March 8, 1929, Kettleman Oil Corporation deeded and transferred to Pacific Western Oil Company, as such co-tenant and co-adventurer with Kettleman Oil Corporation and Frank Kennedy, a portion of its right, title, and interest in and to the

land described in paragraph IV(a) of this complaint, so that, from and after said date, Frank Kennedy became, and ever since has been, and his estate now is, a co-adventurer and co-tenant in said lands with Kettleman Oil Corporation and Pacific Western Oil Company and their respective successors in interest therein;

(b) On March 8, 1929, Kettleman Oil Corporation assigned to Pacific Western Oil Company, as such co-tenant and co-adventurer with Kettleman Oil Corporation and Frank Kennedy, a portion of its right, title and interest in and to U. S. Oil and Gas Prospecting Permit "Sacramento 019438", referred to in paragraph IV(b) of this complaint, and in and to the lands thereby covered, so that, from and after said date, Frank Kennedy became, and ever since has been, and his estate now is, a co-adventurer and co-tenant in said lands with Pacific Western Oil Company and its successors in interest therein; a copy of said assignment being attached hereto, marked "Exhibit F" and incorporated by reference.

(c) On March 8, 1929, Kettleman Oil Corporation assigned to Pacific Western Oil Company, as such co-tenant and co-adventurer with Kettleman Oil Corporation and Frank Kennedy, a portion of its right, title, and interest in and to those oil and gas leases and U. S. Oil and Gas Prospecting Permits as to which Frank Kennedy became an overriding royalty owner by virtue of his agreements with Kettleman Oil Corporation described in paragraph V(c) of this complaint (that portion of the U. S. Oil and Gas Prospecting Permit, Serial Num-

ber Visalia 09131, as to which Frank Kennedy had become an overriding royalty owner by virtue of the agreement described in paragraph V(e), having ripened into U. S. Oil and Gas Lease Sacramento 019327(e) bearing date January 7, 1927), so that, from and after said date, Frank Kennedy became, and ever since has been, and his estate now is, a co-adventurer and co-tenant with Pacific Western Oil Company and its successors in interest in the lands covered by said oil and gas leases and U. S. Oil and Gas Prospecting Permits.

VII.

That thereafter, and on March 7, 1935, and in furtherance of said arrangement of co-adventure, Pacific Western Oil Company transferred and assigned its interests acquired from Kettleman Oil Corporation, as described in paragraph VI(a), (b), and (c) of this complaint, to Shell Oil Company, Incorporated, and Kettleman and Inglewood Corporation, so that, from and after said date, Frank Kennedy became, and ever since has been, and his estate now is, a co-adventurer and co-tenant with Shell Oil Company, Incorporated, and Kettleman and Inglewood Corporation, and their successors in interest in those lands in which Pacific Western Oil Company had acquired its co-tenant interest as set out in paragraph VI.

VIII.

That thereafter, and on October 1, 1940, Kettleman Oil Corporation, Ltd. transferred and assigned all of its then remaining interest in those lands

described in paragraph V(a), (b) and (c) of this complaint to Standard Oil Company of Texas and to defendant Honolulu Oil Corporation, as co-tenants and co-adventurers, and Kettleman and Inglewood Corporation transferred and assigned all of its interest in these same lands, acquired as described in paragraph VII of this complaint, to Standard Oil Company of Texas and defendant Honolulu Oil Corporation, as co-tenants and co-adventurers; that thereafter, and on October 1, 1947, Standard Oil Company of Texas transferred and assigned all of its said interest to Standard Oil Company of California, a corporation; so that, from and after said dates, Frank Kennedy became, and ever since has been, and his estate now is, a co-adventurer and co-tenant in said lands with Shell Oil Company, Incorporated, Standard Oil Company of California, and defendant Honolulu Oil Corporation; copies of said transfers and assignments being attached hereto, marked "Exhibit G through Exhibit U", and incorporated by reference.

IX.

That in the case of the lands covered by the U. S. Oil and Gas Prospecting Permits referred to in paragraph VI(b) and (c), and in which Frank Kennedy had reserved a part and was co-adventurer and co-tenant, as aforesaid, such discoveries of oil and gas were made upon said lands as were necessary to enable the issuance of leases upon said permitted lands, and accordingly upon joint application by Kettleman Oil Corporation and Pacific

Western Oil Company to the Department of the Interior of the United States of America for leases on the lands covered by said U. S. Oil and Gas Prospecting Permits, said applications were duly granted so that, inter alia, the United States of America, by and through its Department of the Interior, General Land Office, made, executed, and delivered to Kettleman Oil Corporation and Pacific Western Oil Company its four oil and gas leases as follows:

(a) Lease dated October 4, 1929, and numbered "Sacramento 019438(c)", covering the following lands situate in the State of California, County of Fresno, more particularly described as follows:

The North Half (N½) of Section Twenty-eight (28), Township Twenty-one (21) South, Range Seventeen (17) East, M. D. B. & M.

(b) Lease dated October 4, 1929, and numbered "Sacramento 019438(d)", covering the following lands situate in the State of California, County of Fresno, more particularly described as follows:

The Northeast Quarter (NE¼) of Section Twenty (20), Lots One (1) and Two (2) and the East Half of the Northwest Quarter (E½ of NW¼) and the Northeast Quarter (NE¼) of Section Thirty (30), and the North Half of the Northeast Quarter (N½NE¼) of Section Thirty-two (32), all in Township Twenty-one (21) South, Range Seventeen (17) East, M. D. B. & M.

(c) Lease dated December 16, 1929, and numbered "Sacramento 019696(c)", covering the following lands situate in the State of California, in

part in the County of Kings and in part in the County of Fresno, more particularly described as follows:

The Southwest quarter of the Northeast quarter (SW¼NE¼); the Northwest quarter (NW¼); and the West Half of the Southwest Quarter (W½ SW¼) of Section Thirty-four (34), Township Twenty-one (21) South, Range Seventeen (17) East, M. D. B. & M.

(d) Lease dated December 16, 1929, and numbered "Sacramento 019696(d)", covering the following lands situate in the State of California, in part in the County of Kings and in part in the County of Fresno, more particularly described as follows:

The Northwest Quarter of the Northeast Quarter (NW¼NE¼) of Section Thirty-four (34), Township Twenty-one (21) South, Range Seventeen (17) East, and the Northeast Quarter (NE¼) of Section Eight (8), and the North Half of the Northwest Quarter (N½NW¼) of Section Fourteen (14), Township Twenty-two (22) South, Range Seventeen (17) East, M. D. B. & M.

which said leases were substantially in the form attached hereto marked "Exhibit V" and "Exhibit W", respectively; and that the area embracing said lands and lands adjacent thereto in the general zone of discovery was and is generally known, and is hereinafter referred to as the "North Dome Kettleman Hills Field." That said leases are still in full force and effect, and that Frank Kennedy was, and his estate now is, a co-adventurer and co-tenant therein and thereunder, and in the lands covered thereby

and in the oil and gas produced therefrom, with Kettleman Oil Corporation and Pacific Western Oil Company and their aforesaid successors in interest.

X.

That on or about July 25, 1929, and subsequent thereto, defendant (or its predecessors in interest) and other permittees, lessees, and owners of lands in the North Dome Kettleman Hills Field and the Secretary of the Interior jointly entered into an agreement, accepted and approved by the Department of the Interior on November 22, 1929, regulating, controlling, and governing the development and production of oil and gas in the North Dome Kettleman Hills Field; and a copy of the form of said unit conservation agreement is attached hereto, marked "Exhibit X", and incorporated by reference.

XI.

That thereafter, and after said U. S. Oil and Gas Prospecting Permit had ripened into leases, as aforesaid, and on or about January 31, 1931, defendant (or its predecessors in interest) and the other lessees, owners, and persons entitled to produce oil and gas from the lands in the North Dome Kettleman Hills Field entered into a unit plan agreement for the unified development and production of oil, gas and other hydrocarbons from said North Dome of the Kettleman Hills Field under which they pooled their respective lands and interests in consideration of being entitled to participate in all oil and gas produced from the pooled lands

and interests in proportion to the land and interest contributed by each of them; that in and by said unit plan agreement it was agreed, inter alia:

(a) that all operations for the production of oil, gas, and other hydrocarbon substances in the North Dome Kettleman Hills Field, should be conducted and administered by Kettleman North Dome Association, a non-profit corporation whereof defendant, or its predecessors in interest, and said lessees, owners, and persons entitled to produce oil and gas from the North Dome Kettleman Hills Field were and are members;

(b) that any oil, gas, or other hydrocarbon substances produced by said Kettleman North Dome Association from any part of said North Dome Kettleman Hills Field within the producing limits thereof, as from time to time determined by the board of directors of Kettleman North Dome Association in accordance with said agreement, should be allocated between defendant, or its predecessors in interest, and the other parties to said agreement, their successors and assigns, in the proportion that the area within said producing limits from which they were and are respectively entitled to produce oil, gas, and other hydrocarbon substances bore or bears to the total area within said producing limits; and

(c) that said unit plan agreement was and is made subject to, and that said Kettleman North Dome Association shall perform, all obligations under the leases and/or operating agreements of the member parties signatory, and such members, in-

cluding defendant (and its predecessors in interest), agreed to fully discharge their obligations thereunder; and that thereby defendant, either directly or through its predecessors in interest, agreed to fully pay and discharge its aforesaid obligations to its co-tenant and co-adventurer, Frank Kennedy;

and that copies of the articles of incorporation, of the form of the by-laws of said Kettleman North Dome Association, and of the form of said unit plan agreement, with approvals thereof and consents required thereto, are attached hereto, marked "Exhibit "Y", and incorporated by reference.

That Frank Kennedy, as co-adventurer and co-tenant with Kettleman Oil Corporation and Pacific Western Oil Company, and as owner of his said reserved interests and title to a portion of the lands in which Kettleman Oil Corporation and Pacific Western Oil Company were interested, as aforesaid, and as co-tenant in the oil and gas produced therefrom, was requested by Kettleman Oil Corporation and Pacific Western Oil Company to, and did, join in said unit plan agreement, and did consent that Kettleman Oil Corporation and Pacific Western Oil Company and their successors in interest, become members of said Kettleman North Dome Association and so pool their and Frank Kennedy's lands and interests in its unit plan and operation; and in consideration of his said consent Kettleman Oil Corporation and Pacific Western Oil Company for themselves, and their successors and assigns, covenanted and agreed to pay to Frank Kennedy, and

to plaintiffs and his estate, the same part of the oil, gas, and other hydrocarbon substances (or, if not taken in kind, the same percentage of the value of the oil, gas, and other hydrocarbon substances) produced and allocated to Kettleman Oil Corporation and Pacific Western Oil Company, their successors and assigns, by Kettleman North Dome Association by reason of its right to produce oil, gas and other hydrocarbon substances from the lands in which Kettleman Oil Corporation, Pacific Western Oil Company, and Frank Kennedy were co-tenants and co-adventurers, as aforesaid, which Frank Kennedy would be entitled to receive, and plaintiffs are now entitled to receive, had the oil, gas, or other hydrocarbon substances so allocated been produced from said lands; that copies of said consents and agreements by Frank Kennedy, dated February 13, 1931, are attached hereto, marked "Exhibit Z" and "Exhibit AA", and incorporated by reference; and that pursuant thereto Kettleman Oil Corporation and Pacific Western Oil Company became, and their aforesaid successors in interest, (including defendant) now are, members of Kettleman North Dome Association and parties to its unit plan agreement for the mutual benefit and account of themselves and Frank Kennedy and his estate as co-tenants and co-adventurers.

XII.

That by reason of the foregoing, Kettleman Oil Corporation and Pacific Western Oil Company were, and their successors in interest (including defendant) now are, co-adventurers and co-tenants

with Frank Kennedy and plaintiffs in the lands, among others, covered by those oil and gas leases and U. S. Oil and Gas Prospecting Permits referred to in paragraphs VI(b) and (c)—which said U. S. Oil and Gas Prospecting Permits resulted in the issuance of U. S. Oil and Gas Leases as described in paragraph IX—and in the oil, gas, and other hydrocarbon substances therein and produced therefrom; and Frank Kennedy and plaintiffs, as such co-adventurer and co-tenant with Kettleman Oil Corporation and Pacific Western Oil Company, and their respective successors in interest (including defendant), in said lands and the production therefrom have at all times herein mentioned been, and now are, the owners of:

(a) A reservation and royalty, from the lands covered by U. S. Oil and Gas Lease numbered "Sacramento 019438(c)" and described in paragraph IX(a), supra, of:

(1) Five per cent of all oil produced and saved therefrom, (or, when not taken in kind by Frank Kennedy or plaintiffs, an amount equal in value to five per cent of all oil produced and saved therefrom); and

(2) Five per cent of the net proceeds remaining from the sale of gas, dry gas, and casinghead gasoline produced and sold therefrom (after deducting the cost of manufacturing and marketing the same).

(b) A reservation and royalty, from the lands covered by U. S. Oil and Gas Lease numbered "Sacramento 019438(d)", and described in paragraph IX(b), supra, of:

(1) Three per cent of all oil produced and saved therefrom, (or, when not taken in kind by Frank Kennedy or plaintiffs, an amount equal in value to three per cent of all oil produced and saved therefrom); and

(2) Three per cent of the net proceeds remaining from the sale of gas, dry gas, and casinghead gasoline produced and sold therefrom (after deducting the cost of manufacturing and marketing the same);

(c) An overriding royalty, from the lands covered by:

(1) portions of the oil and gas lease entered into on the 30th day of December, 1926, between Marland Oil Company of California, as Lessor, and Kettleman Oil Corporation, as Lessee;

(2) U. S. Oil and Gas Lease numbered "Sacramento 019327(e), derived from U. S. Oil and Gas Prospecting Permit, Serial Number "Visalia 09131";

(3) U. S. Oil and Gas Leases numbered "Sacramento 019696(c)" and "Sacramento 019696(d)", derived from U. S. Oil and Gas Prospecting Permit Serial Number Visalia 010337;

as set out in the overriding royalty agreement and supplement thereto and described in paragraph V(c), supra, of:

(1) An amount equal in value to two per cent of all oil produced and saved therefrom; and

(2) An amount equal in value to four per cent of the net proceeds remaining from the sale of gas, dry gas, and casinghead gasoline produced and sold

therefrom (after deducting the cost of manufacturing and marketing the same);

and that by reason of said unit plan agreement, referred to in the preceding paragraph, Frank Kennedy and plaintiffs are the owners of, and entitled to, the same reserved and royalty shares of all oil, gas, and other hydrocarbon substances produced by Kettleman North Dome Association and allocated to Kettleman Oil Corporation and Pacific Western Oil Company, and their successors in interest (including defendant) by reason of the inclusion of such co-tenancy leased lands in the producing area under said unit plan agreement as Frank Kennedy and plaintiffs own and are entitled to receive were such oil, gas, or other hydrocarbon substances produced directly from said co-tenancy leased lands, aforesaid.

XIII.

That continuously since the formation of said Kettleman North Dome Association and the execution of said unit plan agreement, said Kettleman North Dome Association has produced and still produces oil and gas from the portion of the field located within the producing limits thereof as determined in accordance with the provisions of said agreement; and that said Kettleman North Dome Association allocated to Kettleman Oil Corporation and to Pacific Western Oil Company a portion of the oil and gas so produced by reason of the right of Kettleman Oil Corporation, Pacific Western Oil Company, and Frank Kennedy, as co-tenants, to

produce oil and gas from the lands covered by those oil and gas leases described in paragraph XII, and that said Kettleman North Dome Association now allocates to defendant, as one of the successors in interest of Kettleman Oil Corporation and Pacific Wetern Oil Company, a portion of the oil and gas so produced by reason of the right of defendant, as one of the successors in interest of Kettleman Oil Corporation and Pacific Western Oil Company, and Frank Kennedy (and his estate), as co-tenants and co-adventurers to produce oil and gas from the lands described in said oil and gas leases.

XIV.

That from the time of the execution of said unit plan agreement Kettleman Oil Corporation and Pacific Western Oil Company and/or their successors in interest, including defendant, have extracted or caused to be extracted casinghead gasoline from the gas allocated to them as alleged in the next preceding paragraph.

XV.

That Frank Kennedy and plaintiffs have at all times herein mentioned elected to take the shares and royalties reserved to Frank Kennedy in money rather than in kind, and, accordingly, during the period commencing with the production and allocation of oil and gas to Kettleman Oil Corporation and Pacific Western Oil Company, as aforesaid, and continuing until the present time, defendant, and its predecessors in interest, have from time to time

made payments to Frank Kennedy (and, upon his death, to plaintiffs) purporting to be payments of the true value of plaintiff's (Frank Kennedy's) share of the oil produced and saved and the gas produced and sold by Kettleman North Dome Association and/or defendant, and its predecessors in interest, during the period covered by such payments; that the correctness or incorrectness of said payments could or can be ascertained only from facts known to defendant, and its predecessors in interest, and unknown to Frank Kennedy and plaintiffs; that Frank Kennedy at all times, and until the early part of 1940, reposed and had the greatest trust and confidence in defendant's predecessors in interest, his co-adventurers and co-tenants, and in their representations that such payments were correct, upon which representations he relied.

XVI.

That on or about July 10, 1939, the United States of America, as plaintiff, filed an action in the District Court of the United States, in and for the Southern District of California, Central Division, against Kettleman North Dome Association, defendant, and other of its lessees, in the North Dome Kettleman Hills Field, as defendants, charging, inter alia, that said defendant lessees had failed to pay the United States of America, as lessor, the full royalties to which it was entitled because, inter alia, they had paid royalties based upon a "posted price" for oil which was less than the true value of such oil at the time of its production; that the United

States of America, as lessor under the U. S. Oil and Gas Leases numbered "Sacramento 019438(c)", "Sacramento 019438(d)", "Sacramento 019327(e)„' "Sacramento 019696(c)", and "Sacramento 019696(d)", aforesaid, thereafter and on March 30, 1946, recovered judgment against defendant lessees for such deficiency in royalties paid by them; and such judgment is now under appeal.

That Frank Kennedy subsequently learned of the filing of such action by the United States of America and of the question raised therein as to the propriety of the royalty payments made by defendant; that this was the first intimation to Frank Kennedy that defendant, and its predecessors in interest, were not, and had not, fully, truly, and correctly accounted to Frank Kennedy for the true value of his reserved and royalty share of the oil produced and saved from the leases and land wherein he and defendant, and its predecessors in interest, were co-adventurers and co-tenants, aforesaid; and that thereupon Frank Kennedy insisted that such basis was not correct and did not constitute payment to Frank Kennedy of the true value of his reserved and royalty share of the oil, gas, and other hydrocarbon substances produced and saved therefrom; and that Frank Kennedy demanded, and plaintiffs now demand, that defendant fully and truly account for, and pay, the true value of his said reserved and royalty share, but that defendant has failed and neglected so to do.

XVII.

That subsequently, by an agreement dated January 1, 1940:

(a) Kettleman Oil Corporation, Ltd., Pacific Western Oil Company, and Kettleman and Inglewood Corporation, the predecessors in interest of Standard Oil Company of California, and defendant Honolulu Oil Corporation; and

(b) Shell Oil Company, Incorporated;

agreed in writing with Frank Kennedy that in computing the running of any statute of limitations on any claim which Frank Kennedy might make against any of them for underpayment of overriding royalties on the production allocated to them by the Kettleman North Dome Association with respect to those lands in which Frank Kennedy had an interest, as set out in paragraphs IV and V, Supra, the period commencing January 1, 1940, and ending with the final determination of that certain action entitled "United States of America vs. General Petroleum Corporation of California, et al." and numbered 467-C in the records of the District Court of the United States in and for the Southern District of California, Central Division, should be excluded; a copy of said agreement being attached hereto, marked "Exhibit BB", and incorporated by reference.

XVIII.

That defendant, having become, by transfers described in paragraphs VI, VII, and VIII, a cotenant and co-adventurer with Frank Kennedy (and plaintiffs) in those lands and interests embodied

in the original arrangement of co-adventure between Frank Kennedy and Kettleman Oil Corporation described in paragraph V, and having become a member of Kettleman North Dome Association, has, by virtue of Article XI of the Kettleman North Dome Association Unit Plan Agreement, described in paragraph XI, supra, assumed all of the obligations of its predecessors in interest under said unit plan agreement including the obligation to pay to Frank Kennedy (and now to plaintiffs) his rightful share of the oil produced and saved and the gas produced and sold by Kettleman North Dome Association and/or the members thereof; and that, in such connection, inter alia, Standard Oil Company of Texas and defendant Honolulu Oil Corporation executed a specific written assumption of all obligations under the Kettleman North Dome Unit Plan with respect to the lands and leases assigned to them, including the lands and leases of Frank Kennedy, as aforesaid, a copy of the form of such assumption of obligations being hereto attached, marked "Exhibit CC" and incorporated by reference.

XIX.

That all of said agreements of co-adventure and co-tenancy, hereinabove referred to, by which defendant now holds and maintains its position and ownership in Kettleman North Dome Association and in the oil, gas, and other hydrocarbon substances produced and allocated from lands in the North Dome Kettleman Hills Field, aforesaid, are still in full force and effect; that defendant has at

no time herein mentioned denied, nor does defendant now deny, the right of Frank Kennedy and plaintiffs to Frank Kennedy's said royalty and reserved share of the oil, gas, and other hydrocarbon substances produced and allocated to defendant under said agreements; and that said co-adventure and co-tenancy is still in existence and has not been terminated.

And as and for a Second, Separate, and Further Cause of Action Against Defendant, Plaintiffs Allege as Follows:

I.

Plaintiffs incorporate herein by reference the allegations of paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, and XIX of plaintiffs' first cause of action as fully as though herein set forth at length.

II.

That by virtue of said agreements wherein and whereby defendant became, and now is, entitled to oil, gas, and other hydrocarbon substances produced from the North Dome Kettleman Hills Field, as aforesaid, Frank Kennedy and plaintiffs became, and now are, co-tenants in ownership of all oil, gas, and other hydrocarbon substances as and when the same are produced and allocated to defendant by Kettleman North Dome Association, and in the proceeds thereof, and plaintiffs are entitled to a full, true, and correct accounting from defendant with respect thereto.

III.

That the royalties and reserved share of Frank Kennedy and plaintiffs in such oil, gas, and other hydrocarbon substances when the same are produced, and in the gasoline, dry gas, and other petroleum products extracted or caused to be extracted by defendant therefrom, can be ascertained only from facts which are within the knowledge of defendant and of which plaintiffs are ignorant, and by means of an accounting ordered by this court; that such accounting involves numerous items and is a complicated one; that in the absence of an accounting and discovery, the royalties and reserved share due plaintiffs cannot be ascertained or determined, and will not be paid by defendant; and that plaintiffs have no adequate or speedy remedy at law.

And as and for a Third, Separate, and Further Cause of Action Against Defendant, Plaintiffs Allege as Follows, to-wit:

I.

Plaintiffs incorporate herein the allegations of paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, and XIX, of plaintiffs' first cause of action as fully as though herein set forth at length.

II.

That at all times herein mentioned, the most confidential relationship existed between Frank Kennedy on the one hand and defendant, or its pre-

decessors in interest, on the other hand, and that, until 1940, as aforesaid, Frank Kennedy reposed the greatest confidence and trust in defendant or its predecessors in interest, and believed that they would deal fairly and justly with Frank Kennedy in all things; that, by reason of Frank Kennedy's reliance upon, and trust, confidence and belief in defendant, or its predecessors in interest, and in their representations that their payments were true and correct, Frank Kennedy accepted said payments under the belief that they were full, true and correct payments for the period which they purported to cover; that by reason of Frank Kennedy's said reliance upon, and trust and confidence in defendant, or its predecessors in interest, and in its aforesaid representations with respect to said periodic payments, Frank Kennedy demanded no other or further accounting from defendant, or its predecessors in interest; and that it was not until the year 1940, when, by reason of the matters hereinabove alleged, Frank Kennedy became uneasy with respect to the correctness and propriety of said payments, that he was first put upon inquiry, and obtained the agreement excluding time from the running of any statute of limitations upon any claim which he might make against defendant, as aforesaid.

III.

That at all times herein mentioned, defendant, or its predecessors in interest, held, and defendant now holds, the lands and leases in which Frank Kennedy and plaintiffs have reserved shares and royal-

ties, as aforesaid, and the oil, gas and other hydrocarbon substances produced therefrom and the proceeds thereof, in trust and as trustee for the benefit and behoof of Frank Kennedy and plaintiffs, and in trust and as trustee to fully account and pay over to Frank Kennedy and plaintiffs the true value of their said reserved shares and royalties therein.

Wherefore, plaintiffs pray that defendant be required to account to plaintiffs for the share or royalties to which plaintiffs are justly entitled on the oil, gas, dry gas, casinghead gas, and other hydrocarbon substances produced and allocated by Kettleman North Dome Association to defendant, and its predecessors in interest, as hereinabove alleged, from March 31, 1931 to date, and that plaintiffs have judgment against defendant for the amounts found due on such accounting, together with interest on such amounts at the legal rate from the respective dates each of such amounts became due, and that plaintiffs be awarded their costs herein and such other and further relief as may be meet and proper in the premises.

/s/ PEDDER, FERGUSON & PEDDER,
Attorneys for Plaintiffs

Duly Verified.

[Endorsed]: Filed November 21, 1950.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

Answering the First Cause of Action of the Complaint of plaintiffs herein, defendant admits, denies and avers as follows:

I.

Defendant admits the averments of paragraphs I, II, III, IV and X.

II.

Answering paragraph V defendant admits the execution and delivery on or about the several dates averred in said paragraph of the deed mentioned in subdivision (a), the assignment mentioned in subdivision (b), the overriding royalty agreement mentioned in subdivision (c), and the operating agreement mentioned in subdivision (d), and also the contents and correctness of Exhibits "A" to "E" inclusive, which are attached to the Complaint; but defendant expressly and specifically denies each and every averment in said paragraph which avers that any of or all the documents mentioned therein and copies of which are attached to the Complaint as Exhibits "A" to "E" inclusive created or gave rise to any relationship of co-adventure or co-tenancy between Frank Kennedy or any of the plaintiffs and the defendant, or any of defendant's predecessors in interest; and defendant also expressly denies that any relationship of co-adventure or co-tenancy exists or ever did exist between Frank Kennedy or any of the plaintiffs and the defendant, or any of defendant's predecessors in interest by reason of any

of or all the aforesaid documents, or otherwise or at all.

III.

Answering paragraph VI defendant admits the execution and delivery on or about the several dates averred in said paragraph of the deed mentioned in subdivision (a), the assignment mentioned in subdivisions (b) and (c), and also the contents and correctness of Exhibit "F" which is attached to the Complaint, but defendant expressly and specifically denies each and every averment in said paragraph which avers that any of or all the documents mentioned therein and copies of which are attached to the Complaint as Exhibits "A" to "E" inclusive created or gave rise to any relationship of co-adventure or co-tenancy between Frank Kennedy or any of the plaintiffs and the defendant, or any of defendant's predecessors in interest; and defendant also expressly denies that any relationship of co-adventure or co-tenancy exists or ever did exist between Frank Kennedy or any of the plaintiffs and the defendant, or any of defendant's predecessors in interest by reason of any of or all the aforesaid documents, or otherwise or at all.

IV.

Answering paragraph VII defendant admits the execution and delivery on or about the date averred in said paragraph of the assignment mentioned in said paragraph, but defendant expressly and specifically denies that said assignment was in furtherance of the arrangement of co-adventure mentioned

therein or any arrangement of co-adventure and expressly and specifically denies each and every averment in said paragraph which avers that Frank Kennedy, his estate, or any of the plaintiffs, is or ever was a co-adventurer or co-tenant with Shell Oil Company, Incorporated, Kettleman and Inglewood Corporation, their successors in interest, or defendant herein, and expressly and specifically denies that Frank Kennedy, his estate, or any of the plaintiffs herein now or ever were co-tenants or co-adventurers in any of the lands mentioned therein with Shell Oil Company, Incorporated, Kettleman and Inglewood Corporation, their successors in interest, or defendant herein, and denies that Pacific Western Oil Company acquired any interest in the lands mentioned therein as co-tenant or co-adturer.

V.

Answering paragraph VIII defendant admits the execution and delivery on or about the several dates averred in said paragraph of the transfers and assignments mentioned therein and also the contents and correctness of Exhibits "G" to "U" inclusive, which are attached to the Complaint; but defendant expressly and specifically denies each and every averment in said paragraph which avers that any of or all the documents mentioned therein and copies of which are attached to the Complaint as Exhibits "G" through "U" inclusive, created or gave rise to any relationship of co-adventure or co-tenancy between Frank Kennedy, his estate, or any of the plaintiffs herein, and Shell Oil Company, In-

corporated, Standard Oil Company of California, and the defendant, or any of defendant's predecessors in interest; and defendant also expressly denies that any relationship of co-adventure or co-tenancy exists or ever did exist between Frank Kennedy, his estate, or any of the plaintiffs, and the defendant or any of defendant's predecessors in interest, by reason of any of the aforesaid documents or otherwise or at all, and further denies that any of the transfers or assignments mentioned in said paragraph were made to or from the persons or corporations mentioned in said paragraph as co-adventurers or co-tenants, and denies that any of said assignments and transfers were made pursuant to any agreement of co-tenancy or co-adventure between any of the persons or corporations mentioned in said paragraph.

VI.

Answering paragraph IX defendant admits the execution and delivery on or about the several dates averred in said paragraph of the leases mentioned in subdivisions (a), (b), (c), and (d) and also the contents and correctness of Exhibits "V" and "W" which are attached to the Complaint; but defendant expressly and specifically denies each and every averment in said paragraph which avers that any of or all the leases or documents mentioned therein and copies of which are attached to the Complaint as Exhibits "V" and "W" created or gave rise to any relationship of co-adventure or co-tenancy between Frank Kennedy, his estate, or any of the plaintiffs, and Kettleman Oil Corporation, Pacific

Western Oil Company or the defendant, or any of defendant's predecessors in interest; defendant also expressly denies that Frank Kennedy had reserved a part of the lands mentioned in said paragraph as co-adventurer or co-tenant and denies that he, his estate, or any of the plaintiffs herein now are or ever were co-adventurers or co-tenants therein with defendant or any of defendant's predecessors in interest, or any of the persons or corporations mentioned in said paragraph.

VII.

Answering paragraph XI defendant admits the execution and delivery on or about the several dates averred in said paragraph of the unit plan agreement and consents and agreements mentioned therein, and also admits the contents and correctness of Exhibits "Y", "Z" and "AA" which are attached to the Complaint. Defendant denies that defendant or its predecessors in interest, or any of them, agreed to pay or to discharge any obligation to Frank Kennedy as co-tenant or co-adventurer and, in this connection, denies that said Frank Kennedy ever was or that his estate or any of the plaintiffs now is or are co-tenants or co-adventurers in any of the lands referred to in said paragraph with defendant, its predecessors in interest, or any of them. Defendant further denies that the said Frank Kennedy at any time ever was, and denies that his estate now is, a co-adventurer or co-tenant with Kettleman Oil Corporation and Pacific Western Oil Company, its successors in interest or any of them,

or the defendant herein, in the whole or any portion of the lands referred to in said paragraph XI, or the oil, gas, or other hydrocarbon substances or any portion thereof at any time produced from the whole or any portion of said lands, and denies that the said Frank Kennedy at any time ever was and denies that his estate now is entitled to receive as co-tenants or co-adventurers any of the oil, gas or other hydrocarbon substances, or royalties in lieu thereof or therefrom, from the whole or any portion of said lands as co-tenants or co-adventurers, and denies that any of the acts and things alleged in said paragraph XI to have taken place were done by the said Frank Kennedy or his estate, Kettleman Oil Corporation or Pacific Western Oil Company, its successors in interest or any of them, or the defendant herein, as co-adventurers and co-tenants in the whole or any portion of the lands referred to in said paragraph XI, or as co-adventurers and co-tenants, or as co-adventurers or co-tenants in the oil, gas, or other hydrocarbon substances or the royalties in lieu thereof or therefrom from the whole or any portion of said lands.

VIII.

Answering paragraph XII defendant denies that Kettleman Oil Corporation or Pacific Western Oil Company or their successors in interest, or defendant herein or any of them, now are or ever were co-adventurers or co-tenants with Frank Kennedy, his estate, or plaintiffs herein or any of them, in the lands or any portion thereof referred to in said paragraph XII or in any oil, gas or other hydro-

carbon substances in or produced from the whole or any portion of said lands, and further denies that the said Frank Kennedy, his estate or plaintiffs or any of them, now are or ever were the owners as co-adventurers or co-tenants with Kettleman Oil Corporation or Pacific Western Oil Company or their successors in interest, or defendant herein, of any of the royalties referred to in said paragraph XII. Defendant denies that any of the lands or any portion thereof referred to in said paragraph XII now are or ever were "co-tenancy" lands and further denies that the unit plan agreement referred to in said paragraph XII or any unit plan agreement or any agreement whatsoever resulted in the inclusion therein or the inclusion in the lands of the Kettleman North Dome Association of any co-tenancy leased lands of said Frank Kennedy or his estate or plaintiffs herein or any of them.

IX.

Answering paragraph XIII defendant denies that continuously since the formation of Kettleman North Dome Association mentioned in paragraph XIII of plaintiffs' Complaint or since the execution of the unit plan agreement mentioned in said paragraph or at any other time or at all said Kettleman North Dome Association allocated to Kettleman Oil Corporation or to Pacific Western Oil Company a portion or any or all the oil and gas produced from the lands referred to in said paragraph XIII by reason of the right of Kettleman Oil Corporation, Pacific Western Oil Company, Frank Kennedy, his estate, or any of the plaintiffs herein

as co-tenants to produce oil and gas from said lands and denies that said Kettleman North Dome Association now allocates to defendant or ever has allocated to defendant as one of the successors in interest of Kettleman Oil Corporation and Pacific Western Oil Company or at all a portion or any of the oil and gas produced from the lands referred to in said paragraph XIII by reason of the right of defendant as one of the successors in interest of Kettleman Oil Corporation and Pacific Western Oil Company or in any other capacity and Frank Kennedy or his estate or any of the plaintiffs herein as co-tenants and co-adventurers to produce oil and gas from said lands; defendant denies that Frank Kennedy or his estate or any of the plaintiffs herein is or are now or ever was or were a co-tenant or co-adventurer with Kettleman Oil Corporation, Pacific Western Oil Company or the defendant.

X.

Defendant admits the averments in paragraph XIV except that in so far as the extraction of casinghead gasoline by Kettleman Oil Corporation, Pacific Western Oil Company, and their successors in interest, and defendant is alleged to have been made "from the gas allocated to them as alleged in the next preceding paragraph" defendant denies that any gas allocated to said Kettleman Oil Corporation, Pacific Western Oil Company, and their successors in interest, and defendant herein was allocated to said persons or corporations as co-adventurers or co-tenants in the lands or any portion thereof referred to in said paragraph XIV.

XI.

Answering paragraph XV defendant avers that the payments made to said Frank Kennedy and to his estate and to plaintiffs and each of them, and referred to in said paragraph XV, were in fact the true value of the said Frank Kennedy's share, his estate's share and the plaintiffs' share of all oil and gas referred to in said paragraph; denies that the correctness or incorrectness of said payments could ever or now can be ascertained only from facts known to defendant and its predecessors in interest, or either or any of them. Defendant denies that Frank Kennedy at any time reposed or had any trust or confidence in defendant or defendant's predecessors in interest or any of them as his co-adventurers or co-tenants or otherwise or at all; defendant denies that the said Frank Kennedy at any time reposed and had any trust or confidence in the representations of defendant or defendant's predecessors in interest or any of them as his co-adventurers or co-tenants or otherwise or at all, and further denies that said Frank Kennedy relied upon the representations of any of the persons or corporations mentioned in said paragraph XV that the payments referred to in said paragraph XV were correct. Defendant denies that any co-tenancy or co-adventure at any time existed between the said Frank Kennedy, his estate, any of the plaintiffs herein and defendant herein or any of defendant's predecessors in interest.

XII.

Answering paragraph XVI defendant denies that the first intimation to said Frank Kennedy that the defendant or its predecessors in interest or any of them did not and had not fully, truly and correctly accounted to Frank Kennedy for the true value of his share of the oil produced and saved from the lands referred to in said paragraph was subsequent to the filing of the action referred to in said paragraph XVI; in this connection defendant avers that the defendant and its predecessors in interest and each of them, had at all times fully, truly and correctly accounted to said Frank Kennedy, his estate, and each of plaintiffs herein, for the true value of his and their reserved and royalty shares of the oil produced and saved from the lands referred to in said paragraph XVI. Defendant denies that the said Frank Kennedy, his estate, or any of plaintiffs herein, now are or ever were co-adventurers or co-tenants with defendant herein, its predecessors in interest, or any of them, in the lands or leases referred to in said paragraph XVI or in the oil, gas and hydrocarbon substances produced therefrom, and denies that any co-tenancy or co-adventure at all existed between the said persons and corporations at any time.

XIII.

Answering paragraph XVII defendant admits the averments thereof except in so far as said paragraph avers that the interest of said Frank Kennedy in the lands referred to in said paragraph was as set out in paragraph V of plaintiffs' Com-

plaint. Defendant denies that any arrangement or relationship of co-tenancy or co-adventure at any time existed between said Frank Kennedy and Kettleman Oil Corporation, or its successors in interest, or defendant herein, and denies that the said Frank Kennedy, his estate, or any of plaintiffs herein now have or ever had any interest in said lands as co-adventurers or co-tenants with Kettleman Oil Corporation, its successors in interest, or defendant herein.

XIV.

Answering paragraph XVIII defendant denies that it became or ever was or now is by the transfers described in paragraphs VI, VII and VIII of plaintiffs' Complaint or otherwise or at all, co-tenant or co-adventurer with Frank Kennedy, his estate, or any of plaintiffs herein, in any of the lands or interests referred to in said paragraph XVIII or at all. Defendant denies that any original arrangement of co-adventure referred to in said paragraph XVIII or any arrangement of co-adventure or co-tenancy exists or ever did exist between Frank Kennedy, his estate, or any of the plaintiffs herein and Kettleman Oil Corporation, its successors in interest, or defendant. Defendant denies that by having become a member of Kettleman North Dome Association it has or ever had by virtue of Article XI of Kettleman North Dome Association Unit Plan Agreement or any agreement or at all, assumed all or any of the obligations of its pre- or at all as co-adventurer or co-tenant with said decessors in interest under said unit plan agreement

Frank Kennedy, his estate, or any of plaintiffs herein. Defendant admits the contents and correctness of Exhibit "CC" which is attached to the Complaint.

XV.

Defendant denies that it now holds or ever held its position or ownership in Kettleman North Dome Association or in the oil, gas and other hydrocarbon substances produced and allocated from the lands in the North Dome Kettleman Hills Field by the agreements of co-adventure and co-tenancy referred to in said paragraph XIX or any agreement of co-adventure or co-tenancy whatsoever; denies that the agreements of co-adventure and co-tenancy referred to in said paragraph XIX now are or ever were in force and effect, and denies that any of or all said agreements created any relationship of co-adventure or co-tenancy and denies that any such relationship ever was or now is in force and effect. Defendant admits that it does not now deny and never has denied the right of Frank Kennedy, his estate, and all plaintiffs herein, to royalties upon oil, gas and other hydrocarbon substances produced and allocated under the agreements referred to in said paragraph.

XVI.

And further answering the averments in the Complaint and in each count thereof, defendant denies that there is or ever was any agreement of any kind or character whatsoever or at all between Frank Kennedy or any of the plaintiffs and defendant or any of its predecessors in interest that said

Frank Kennedy or any of the plaintiffs should be or were co-adventurers or co-tenants with defendant or any of its predecessors in interest in any of the lands mentioned in the Complaint or in any of the oil, gas or other hydrocarbons therein or produced therefrom, denies that Frank Kennedy or any of the plaintiffs is or ever was co-adventurer or co-tenant with defendant or any of its predecessors in interest in any of said lands or in any oil, gas or other hydrocarbons therein or produced therefrom; and denies that there is or ever was any confidential relationship between said Frank Kennedy or any of the plaintiffs and defendant or any of its predecessors with respect or in relation to any of the matters or things averred in any of said counts.

Answering the Second Cause of Action of plaintiffs' Complaint herein, defendant admits, denies and avers as follows:

I.

Defendant admits and denies the averments of paragraph I in the same manner and to the same extent as heretofore admitted and denied in its answer to plaintiffs' First Cause of Action herein.

II.

Defendant denies the averments and each of them contained in paragraphs II and III.

Answering the Third Cause of Action of plaintiffs' Complaint herein, defendant admits, denies and avers as follows:

I.

Defendant admits and denies the averments of paragraph I in the same manner and to the same extent as heretofore admitted and denied in its answer to plaintiffs' First Cause of Action herein.

II.

Defendant denies the averments and each of them of paragraphs II and III and, in this connection, avers that the payments referred to in said paragraph II were in fact full, true and correct payments to the said Frank Kennedy of the full amount of his royalty computed upon the true value of all oil, gas or other hydrocarbon substances referred to in said paragraph II.

For a First Affirmative Defense to said Complaint, defendant avers:

I.

That the causes of action, and each of them, set forth in said Complaint are and each is barred by the provisions of Subdivision 1 of Section 337 of the Code of Civil Procedure of the State of California.

For a Second Affirmative Defense to said Complaint, defendant avers:

I.

That the causes of action, and each of them, set forth in said Complaint are and each is barred by the provisions of Section 343 of the Code of Civil Procedure of the State of California.

For a Third Affirmative Defense to said Complaint, defendant avers:

I.

Pursuant to the various agreements whereunder and whereby the said Frank Kennedy became entitled to receive from defendant herein royalties on account of oil, gas or other hydrocarbon substances from the lands referred to in plaintiffs' Complaint, defendant prepared each month a monthly statement of the royalties due said Frank Kennedy for the month covered by said statement, and each month delivered such statement to said Frank Kennedy accompanied by its check in the amount of such royalties shown to be due for such month.

II.

Said monthly statements of oil royalties from defendant to said Frank Kennedy, and said monthly royalty checks accompanying said statements, payable to the said Frank Kennedy in the amount of the royalties shown to be due by said statements, were tendered by defendant to said Frank Kennedy for each month from and including May 31, 1931 to the time of the commencement of this action upon the express condition that said monthly statements and said accompany checks were to be accepted by the said Frank Kennedy in full and complete satisfaction of all the rights of the said Frank Kennedy and all obligations due the said Kennedy from defendant for the period covered by each such statement and check. Said Frank Kennedy retained, cashed and realized the amount of each such

monthly check so delivered by defendant to said Frank Kennedy from and including the month of May 1931 to and including the time of the commencement of this action. Said Frank Kennedy received and assented to each said monthly statement, and received and cashed and realized the proceeds of each said monthly check with full knowledge and understanding that the same were tendered by defendant to him as a full and complete satisfaction of all defendant's obligations to the said Frank Kennedy for the period covered by each such statement and check.

III.

By reason of the foregoing, a full and complete accord was reached between said Frank Kennedy and defendant each month for the above-mentioned period of time, and a full and complete satisfaction of defendant's obligations to said Frank Kennedy and of said Kennedy's rights in the matter, existed and now exists between the defendant and plaintiffs herein.

Wherefore, defendant prays that plaintiffs take nothing by their Complaint herein, or any cause of action thereof; that defendant be dismissed hence; that it recover its costs herein expended; and for such other and further relief as to the Court may seem meet and proper.

Dated: February 21st, 1955.

/s/ HERBERT W. CLARK,
Attorney for Defendant

Of Counsel:

/s/ Morrison, Foerster, Holloway, Shuman & Clark

/s/ Alfred L. Gibson

Acknowledgment of Service attached.

[Endorsed]: Filed February 21, 1955.

[Title of District Court and Cause.]

STATEMENT OF AGREED FACTS

It is hereby Stipulated and Agreed by and between the parties hereto by their respective counsel as follows:

I.

Frank Kennedy died on October 4, 1946 and thereafter such proceedings were duly taken and had in the Superior Court of the State of California in and for the County of San Mateo that by an order of said court duly given and made on November 4, 1946, plaintiffs Katharine H. Kennedy and Mark C. Elworthy were duly appointed executors of the last will and testament of said Frank Kennedy, deceased, and they thereupon and on November 7, 1946 duly qualified as such executors and ever since have been and now are the duly appointed, qualified and acting executors of the will of said Frank Kennedy, deceased. Said Katharine H. Kennedy and Mark C. Elworthy as such executors of the will of Frank Kennedy, deceased, now

are and were at the time of the commencement of this action duly authorized and empowered to commence and prosecute this action on behalf of the estate of said Frank Kennedy, deceased.

II.

At all times mentioned in the complaint on file herein the defendant Honolulu Oil Corporation has been and now is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

III.

Frank Kennedy was, during his lifetime, and plaintiffs Katharine H. Kennedy and Mark C. Elworthy, and each of them, are, and at all times mentioned in the complaint on file herein, were citizens of the State of California; defendant Honolulu Oil Corporation is a citizen of the State of Delaware; and the amount in controversy in this action exceeds Three Thousand Dollars ($3,000) exclusive of interest and costs.

IV.

On January 6, 1927, Frank Kennedy was the owner and in possession of:

(a) all that certain lot, piece, or parcel of land situate in the County of Fresno, State of California, bounded and described as follows, to wit:

The South West Quarter (SW¼) of Section Twenty-two (22), Township Twenty-one (21) South, Range Seventeen (17), East, M.D.B. & M.

(b) U. S. Oil and Gas Prospecting Permit bear-

ing Serial No. Visalia 09551, issued to Thomas M. Crum by the U. S. General Land Office, Department of the Interior, under date of May 28, 1921, and subsequently transferred, by mesne assignments, to Frank Kennedy; which said U. S. Oil and Gas Prospecting Permit was subsequently renumbered "Sacramento 019438", and covered the following described land located in the County of Fresno, State of California, to-wit:

The South half (S½) and the Northwest quarter (NW¼) of Section 18; all of Sections 20, 28, and 30; and the Northeast quarter (NE¼) of Section 32, Township 21 South, Range 17 East, M.D.B. & M., containing 2556.58 acres, more or less.

The said U. S. Oil and Gas Prospecting Permit, Serial No. Visalia 09551, subsequently ripened into oil and gas leases which were and are numbered Sacramento 019438(c) and Sacramento 019438(d), and also into other oil and gas leases which, however, are not involved in this litigation.

V.

Entitled in this action and accompanying and to be filed with this Statement of Agreed Facts is a file of exhibits which is marked "Photostatic Copies of Exhibits 'A' to and including 'GG' ". The said file so entitled and marked contains photostatic copies of all exhibits attached to the complaint in this action and, in addition, Exhibits "DD", "EE", "FF" and "GG". The said Exhibits "A" to and including "G" contained in said file so entitled and marked, are all the written, typed, or printed docu-

ments, letters and materials (except this Statement of Agreed Facts, matters admitted by the pleadings herein, statutes, regulations, adjudicated cases and matters of which this Court will take judicial notice) which have pertinency, relationship of any kind or materiality whatsoever to and in respect of any question arising in this litigation. The said exhibits in said file so entitled and marked are believed to be true, correct and complete copies of the originals of said Exhibits "A" through "GG" and they, or such substitutes therefor as counsel may agree upon in writing, shall be considered by Court and counsel in this action as and in lieu of the originals.

VI.

The original of each and every one of the instruments, photostatic copies of which are contained in said file marked "Photostatic Copies of Exhibits 'A' to and including "CC" was, on or about the date that each of said exhibits bears, executed by the person or persons, corporation or corporations, and delivered to the person or persons, corporation or corporations which, on the face of each of said photostatic copies, it purports to have been executed by and delivered to.

VII.

The royalties paid and payable to Frank Kennedy and plaintiffs herein by defendant Honolulu Oil Corporation, or its predecessors in interest, upon production allocated to defendant Honolulu Oil Cor-

poration, or its predecessors in interest, pursuant to the provisions of Exhibit "Y", were paid and are payable by reason of the terms of said Exhibits "A" through "CC" or some of them, as such exhibits severally relate to either all or only a therein specified part of the lands and interests in lands hereinafter described, and by reason of the transfer to Kettleman North Dome Association of the operating rights in, to, on and in respect of the following described lands and interests in lands, referred to in said Exhibits "A" through "CC", or some of them, to-wit:

The South Half (S½) of the Southwest Quarter (SW¼) of Section Twenty-two, the North Half (N½) of Section 28, the Northeast Quarter (NE¼) of Section 20, lots 1 and 2; and the East Half (E½) of the Northwest Quarter (NW¼) and the Northeast Quarter (NE¼) of Section 30, and the North Half (N½) of the Northeast quarter (NE¼) of Section 32, all in Township 21 South, Range 17 East, M.D.B. & M.; the North Half (N½) of the Northwest Quarter (NW¼) of Section 1, the South Half (S½) of the Northeast Quarter (NE¼) of Section 12, the North Half (N½) of the Northeast Quarter (NE¼) of Section 18, the Northeast Quarter (NE¼) of Section 8, and the North Half (N½) of the Northwest Quarter (NW¼) of Section 14, all in Township 22 South, Range 17 East, M.D.B. & M.; the Northwest Quarter (NW¼), and the West Half (W½) of the Northeast Quarter (NE¼), and the West Half (W½) of the Southwest Quarter (SW¼) of Sec-

tion 34, Township 21 South, Range 17 East, M.D. B. & M.

The said South Half of the Southwest Quarter of Section 22, Township 21 South, Range 17 East, M.D.B. & M. is a portion of the land described in paragraph IV(a) of this Statement of Agreed Facts. The North Half of Section 28, Township 21 South, Range 17 East, M.D.B. & M. is a part of the lands described in United States Oil and Gas Prospecting Permit Serial No. Visalia 09551, which permit ripened into Oil and Gas Lease numbered "Sacramento 019438(c)", and the Northeast Quarter of Section 20, lots, 1, 2, and the East Half of the Northwest Quarter and the Northeast Quarter of Section 30, and the North Half of the Northeast Quarter of Section 32, Township 21 South, Range 17 East, M.D.B. & M., are lands covered by said United States Oil and Gas Prospecting Permit Serial No. Visalia 09551 which ripened into Oil and Gas Lease numbered "Sacramento 019438(d)". The North Half of the Northwest Quarter of Section 1, the South Half of the Northeast Quarter of Section 12, the North Half of the Northeast Quarter of Section 18, the Northeast Quarter (NE¼) of Section 8, and the North Half of the Northwest Quarter of Section 14, all in Township 22 South, Range 17 East, M.D.B. & M. and the Northwest Quarter (NW¼), and the West Half (W½) of the Northeast Quarter (NE¼), and the West Half (W½) of the Southwest Quarter (SW¼) of Section 34, Township 21 South, Range 17 East, M.D.B. & M. are other lands not included in said Government leases in which de-

fendant Honolulu Oil Corporation and its predecessors in interest and said Frank Kennedy and plaintiffs herein acquired their respective interests, rights and obligations pursuant to the provisions of the said Exhibits "A" through "CC" or some of them.

VIII.

Defendant Honolulu Oil Corporation, pursuant to the terms and provisions of Exhibit "C" assumed its pro rata share of all of the liabilities and obligations of its predecessors in interest, Kettleman Oil Corporation, Ltd., Pacific Western Oil Company, and Kettleman and Inglewood Corporation, in respect to the lands and leases hereinabove described, which said liabilities and obligations were created through or by reason of the terms of said Exhibits "A" through "CC" or some of them, and such exhibits severally relate to the lands and interests in lands hereinabove described.

IX.

During the period of time involved in this action defendant Honolulu Oil Corporation has been engaged in the business of acquiring lands and interests in lands; exploring, drilling, and developing them for oil, gas and other hydrocarbon substances; and selling to others the oil, gas, and other hydrocarbon substances produced therefrom, and/or distributed to it from other lands or interests in lands acquired by it, or in which it has an interest; but said defendant has never been engaged in the business of refining crude oil or selling the refined products therefrom. All of defendant Honolulu Oil Corporation's share of the oil production allocated and

allotted to it pursuant to the provisions of said Exhibit "Y" as aforesaid was sold by defendant or its predecessors in interest in its crude state to other oil companies who purchased it. The prices accepted by defendant Honolulu Oil Corporation or its predecessors in interest for, and for which it or they sold such oil, were the prices offered and paid by the oil companies purchasing it at the place of production, and defendant or its predecessors in interest accepted the highest prices so offered and paid for such oil, and defendant or its predecessors in interest as the seller of such oil or otherwise, did not participate in any way whatsoever in deciding or determining what price or prices would be paid by such purchasing companies for the oil purchased by them and sold to them, or any of them, by defendant Honolulu Oil Corporation or its predecessors in interest.

X.

Defendant Honolulu Oil Corporation and its predecessors in interest have in turn accounted to Frank Kennedy and the plaintiffs and paid to them a royalty based and computed upon the price received by defendant Honolulu Oil Corporation or its predecessors in interest from the sale of the oil allocated to said defendant or its predecessors in interest on account of the land described in this Statement of Agreed Facts. The mathematical computation of such royalty payments made by defendant Honolulu Oil Corporation and its predecessors in interest, based upon such prices received by defendant or its predecessors in interest is correct; defend-

ant Honolulu Oil Corporation has represented to Frank Kennedy and plaintiffs and now contends that such payments are the full payments to which Frank Kennedy was and plaintiffs are entitled; whereas, plaintiffs contend that during the period commencing July 1, 1931 and ending August 29, 1935, such payments, based upon such prices so received by defendant Honolulu Oil Corporation and its predecessors in interest, were not the full or proper royalties payable to Frank Kennedy and the plaintiffs.

During the period of time involved in this litigation, that is from July 1, 1931 to August 29, 1935, defendant Honolulu Oil Corporation prepared or caused to be prepared on its behalf, and defendant's predecessors in interest prepared or caused to be prepared on their behalf, and submitted to said Frank Kennedy and the plaintiffs herein, monthly statements of the royalties due said Frank Kennedy for the month covered by each such statement, and each month delivered such statement to said Frank Kennedy, accompanied by a check in the amount of such royalties shown to be due for such month; and said checks were retained and cashed by said Frank Kennedy and plaintiffs herein. Such statements were in the nature and form of Exhibit "EE" to this Statement of Agreed Facts.

XI.

Plaintiffs' action and claimed right to recovery herein are directed to, and involved only:

(a) the production of crude oil; and

(b) payments of royalty thereupon during the period of time beginning July 1, 1931 to and including August 29, 1935.

XII.

All of the crude oil involved in this litigation was produced from lands, the operating rights to and with respect to which were transferred and set over to Kettleman North Dome Association in accordance with the terms of the exhibits attached to this Statement of Agreed Facts, and which lands were at all times involved herein within the red line depicted on the map or plat which is attached to Exhibit "Y", as said red line existed from time to time during said period commencing July 1, 1931 and ending August 29, 1935. No part of the North Half of the Southwest Quarter of Section 22, Township 21 South, Range 17 East, M.D.B. & M., being a portion of the lands described in paragraph IV(a) of plaintiffs' complaint, has ever been situated within the blue line so depicted in Exhibit "Y", but at all times involved in this litigation has been situated in what is referred to in said Exhibit "Y" as "non-participating areas", and no production therefrom or allocable thereto, is involved in this litigation.

The South Half of the Southwest Quarter of Section 22, Township 21 South, Range 17 East, M.D.B. & M. was from April 1931 to April 30, 1936 included within the participating areas under the Unit Agreement for the North Dome of Kettleman Hills, which is Exhibit "Y". On April 30, 1936 the South Half of the Southwest Quarter of Section 22,

Township 21 South, Range 17 East, M.D.B. & M. was excluded from participation under said Unit Agreement. As appears from Exhibits "FF" and "GG" neither Frank Kennedy, nor his assigns or successors in interest, nor the plaintiffs herein, ever consented to the defendant herein or its predecessors in interest, joining said Unit Agreement with respect to said above described land and refused to consent to the inclusion of said property or his or their interest in said property within the terms of said Unit Agreement. From and after April 30, 1936 no production was allocated to said described land under said Unit Agreement, and the production and proceeds of said production allocated to said South Half of the Southwest Quarter of Section 22, Township 21 South, Range 17 East, M.D.B. & M. from April 1931 to April 30, 1936 never became payable to said Frank Kennedy, or his assigns, or plaintiffs herein, by reason of his and their refusal to consent to the inclusion in said Unit Agreement of said property, and no production from said land nor any proceeds of said production is or are involved in this litigation.

XIII.

Exhibit "DD" to this Statement of Agreed Facts is a statement covering the period beginning July 1, 1931 to August 29, 1935, which shows in summary form the amounts of the payments which Frank Kennedy claimed and plaintiffs herein claim should have been paid on account of such production of crude oil from or allocated to the lands herein-

above described during such period, which amounts and claims are based upon the price which Frank Kennedy asserted and plaintiffs assert was the fair and true market value of such crude oil during such period; the difference in the amount so paid to Frank Kennedy by defendant Honolulu Oil Corporation and its predecessors in interest and the amount so claimed by Frank Kennedy and the plaintiffs being the sum of $9,519.11.

XIV.

If the Court shall, upon the evidence agreed to by the parties in this Statement of Agreed Facts and the matters admitted by the pleadings, find that the claim of plaintiffs is barred by any applicable statute of limitations, then plaintiffs' claim for said sum of $9,519.11 shall be denied and defendant shall have judgment herein.

XV.

Conversely, if the Court shall, upon the evidence agreed to by the parties in this Statement of Agreed Facts and the matters admitted by the pleadings, find that plaintiffs' claim is not barred by any applicable statute of limitations, then plaintiffs' claim for said sum of $9,519.11 shall be allowed, and plaintiffs shall have judgment against defendant in satisfaction of the accounting prayed for in plaintiffs' complaint, for said principal sum of $9,519.11. In the event that plaintiffs shall also have judgment against defendant as provided in the preceding paragraph of this Statement of Agreed Facts, it is understood and agreed that this statement does not

cover the allowance or disallowance of interest thereon, and that:

(a) plaintiffs shall be free to urge the allowance of interest upon the principal amount of said judgment, or any part thereof, at such rate and in such manner as they shall deem proper; and

(b) defendant shall be free to resist the allowance of interest in whole or in part, as it may deem proper.

XVI.

This Statement of Agreed Facts, together with the exhibits contained in said file marked "Photostatic Copies of Exhibits 'A' to and including 'GG'," and the matters admitted by the pleadings, constitute all the material evidence in, and as well the only evidence that will be offered or used by any of the parties to this action, at any trial on the merits of this cause. Nothing herein contained shall be construed as a waiver by any of the parties hereto of their rights to review on appeal any question of law or of fact arising in this action.

Dated: August 17, 1955.

/s/ PEDDER, FERGUSON & PEDDER,
Attorneys for Plaintiffs

/s/ HERBERT W. CLARK,
Attorney for Defendant

Of Counsel for Defendant:

/s/ Morrison, Foerster, Holloway, Shuman & Clark,

/s/ Alfred L. Gibson

[Endorsed]: Filed August 17, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

To the Plaintiffs Above Named and to Messrs. Pedder, Ferguson & Pedder, their Attorneys:

Take Notice that on November 28, 1955, at the hour of 9:30 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, in the Law and Motion Department of the above-styled court, the Honorable George B. Harris presiding, the above named defendant, by its undersigned counsel, will move the said court to enter summary judgment for the defendant in the above entitled action in accordance with the provisions of Rules 56(b) and (c) of the Federal Rules of Civil Procedure on the ground that the pleadings, the Statement of Agreed Facts on file in said action, and the exhibits contained in the file of exhibits which is marked "Photostatic Copies of Exhibits A to and including GG", which is referred to in paragraph V of said Statement of Agreed Facts, show that the said defendant is entitled to judgment as a matter of law.

Dated: October 11th, 1955.

/s/ HERBERT W. CLARK,
Attorney for Defendant

Of Counsel for Defendant:
/s/ Morrison, Foerster, Holloway, Shuman & Clark
/s/ Alfred L. Gibson

SUMMARY JUDGMENT

This cause having come on for hearing before this Court on November 28, 1955, on defendant's motion for a summary judgment, the said hearing having been specially set for said date, and the said motion having been argued by Herbert W. Clark, Esq., appearing for defendant Honolulu Oil Corporation, and by Kenneth Ferguson, Esq., appearing on behalf of plaintiffs Katharine H. Kennedy and Mark C. Elworthy;

And it appearing from the pleadings, exhibits, papers and records on file herein, the affidavit of Herbert W. Clark, Esq., filed in support of said motion, and from the Statement of Agreed Facts on file herein, that no controverted issue of fact remains to be tried by this Court as to whether so much of plaintiffs' complaint and each cause of action thereof as pertains or related to the period prior to November 21, 1946, is barred by the applicable statutes of limitations of the State of California;

And it appearing to the Court as a matter of law that so much of said cause of action and each count thereof as pertains or relates to the period of time prior to November 21, 1946, is and are barred by the applicable statutes of limitations of the State of California;

It is hereby Ordered, Adjudged and Decreed that defendant Honolulu Oil Corporation have judgment against plaintiffs and each of them as to all claims asserted by said plaintiffs against said defendant

pertaining or relating to any period of time prior to November 21, 1946, and that plaintiffs and each of them take nothing by so much of said complaint and each cause of action thereof as relates or pertains to any period of time prior to November 21, 1946.

Dated: October ....., 1955.

....., Judge of the United States District Court

[Endorsed]: Filed October 12, 1955.

[Title of District Court and Cause.]

AFFIDAVIT

State of California,
City and County of San Francisco—ss.

Herbert W. Clark, being first sworn, deposes and says:

He is and at all times herein mentioned has been a member of the State Bar of California. He was attorney for Honolulu Oil Corporation in that certain action in the District Court of the Southern District of California, Central Division, No. 467-B-Civil, entitled United States vs. General Petroleum Corporation of California, et al., the opinion and decision in which is reported in 73 F. Supp. 225-264. Honolulu Oil Corporation, which is the defendant in the instant action and for which this affiant is an

attorney in the instant action, was also one of the defendants in said action No. 467-B in the District Court for said Southern District of California, Central Division. Said civil action is the action referred to in paragraph XVI, page 18, of the complaint herein. For brevity the said civil action No. 467-B will be herein referred to as the Los Angeles Federal Court Action.

The lands and leases involved in the instant action were involved, with other lands and leases, in said Los Angeles Federal Court Action, and so also was the question of the fair market value thereof, that is to say the fair market value of the production of crude oil and casinghead, natural and dry gas therefrom for certain years prior to July 1, 1939, which was the date on which the complaint therein was filed. The market for the production from a part of the lands involved in the instant action was the market at Kettleman Hills.

The court in said Los Angeles Federal Court Action found, inter alia, that,

"At no time during the period in suit prior to August 29, 1935, was there an open or a competitive market for crude oil at Kettleman Hills and at all such times the posted field prices at Kettleman Hills were artificial and discriminatory, were substantially less than the prices the integrated defendants were paying for comparable crude oil in other California fields, and were substantially less than the reasonable market value of such oil. During the remainder of the period in suit the posted

prices at Kettleman Hills were in line with the prices posted for comparable oil in other important California fields and properly measured the reasonable market value of such oil. There was no evidence that the nonintegrated defendants had anything to do with the determination of the posted prices."

On February 25, 1947 the United States District Judge in the Los Angeles Federal Court Action rendered and caused to be entered judgment in favor of United States of America, the plaintiff therein, and against the defendants therein, including the defendant Honolulu Oil Corporation. A photostatic copy of a certified copy of said judgment as entered and docketed is hereto attached, marked Exhibit A, and made a part of this affidavit.

/s/ HERBERT W. CLARK

Subscribed and sworn to before me this 11th day of October, 1955.

[Seal] /s/ ALICE C. MORSE,
Notary Public in and for the City and County of San Francisco, State of California.

EXHIBIT A

In the District Court of the United States, Southern District of California, Central Division

No. 467-B Civil

United States of America, Plaintiff, vs. General Petroleum Corporation of California, et al., Defendants.

JUDGMENT

Declaring certain of the rights and liabilities of the parties hereto under certain oil and gas leases covering government lands in the Kettleman Hills North Dome field in Kings and Fresno Counties, California, and adjudging the amounts in which certain of the defendants are liable to plaintiff on account of royalties on crude oil, natural gas, and natural-gas gasoline produced under said leases during the period July 1, 1931 to and including June 30, 1939.

This cause having heretofore come on regularly for trial before the above entitled court and evidence having been adduced and the cause argued and the Court being advised in the premises and having made and entered herein its Findings of Fact and Conclusions of Law, now, therefore, it is hereby Ordered, Adjudged and Declared as follows:

I.

It is Ordered and Adjudged that as between plaintiff, The United States of America, and defendants, The Texas Company and Kettleman

North Dome Association, this action be and the same is hereby dismissed.

II.

As between plaintiff, the United States of America, and defendants, General Petroleum Corporation of California; Standard Oil Company of California; Shell Oil Company, Incorporated; Tide Water Associated Oil Company; Union Oil Company of California; Continental Oil Company; Seaboard Oil Company of Delaware; Honolulu Oil Corporation; Standard Oil Company of Texas; Pacific Western Oil Corporation; Pioneer Kettleman Company; George F. Getty, Inc.; Belmont Investment Company and Cynthia Beal, Neil S. McCarthy and A. Calder Mackay, as trustees of said Belmont Investment Company, a corporation in process of dissolution; Ervin S. Armstrong; Etta Helm, as Executrix of the Estate of Lesrey G. Helm, deceased, and Silas L. Gillan; and Carrie Estelle Doheny, Lucy Smith Battson and Los Nietos Company, and each of them, it is Adjudged and Declared that the Secretary of the Interior of the United States is not and never has been empowered by the terms of the leases involved herein, or otherwise, to make a binding determination of or to fix for royalty purposes the value of the crude oil produced under said leases from plaintiff's lands in the Kettleman Hills North Dome field and that none of said defendants have been or are obligated to pay their crude oil royalty obligations to the United States on the minimum price basis prescribed by the said Secretary's order of June 4, 1931. The leases above referred to are

known and designated by their Sacramento serial numbers as leases 019419 (a) and (b); 019492 (a), (b), (c), (d), (e) and (f); 019327 (a), (b), (c), (d) and (e); 019438 (a), (b), (c) and (d); 019696 (a), (b), (c), (d), (e), and (f); 019445 (a), (b), (c) and (d); and 019772 (a).

III.

As between plaintiff and the defendants named in paragraph II supra, it is Adjudged and Declared that when plaintiff is taking its royalties in money the Secretary of the Interior of the United States is lawfully empowered by the terms of the aforesaid leases to determine and fix the value for royalty purposes of the natural gas and natural-gas gasoline produced thereunder and that the said Secretary's minimum price orders of June 4, 1931 and June 23, 1931, insofar as they relate to gas and casing-head gasoline, were at all times from the respective dates of said orders to the filing of this suit (July 10, 1939) valid orders binding on the said defendants and each of them and that said Secretary's so-called natural gas net realization order of June 7, 1937, insofar as it applies to natural gas produced under said leases during the period June 1, 1937 to the filing of this suit, has at all such times been a valid order binding on said defendants and each of them, but that said natural gas net realization order, insofar as it purports to apply to gas produced under said leases prior to June 1, 1937, is invalid and is not and never has been binding on said defendants or any of them.

IV.

It is Ordered and Adjudged that plaintiff have and recover on account of royalties on crude oil, natural gas and natural-gas gasoline produced under defendants' leases during the period July 1, 1931 to and including June 30, 1939, as follows:

(1) From defendant General Petroleum Corporation of California the principal sum of $261,045.25, plus the additional sum of $79,629.63 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(2) From defendant Shell Oil Company, Inc., the principal sum of $41,388.67, plus the additional sum of $12,625.44 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(3) From Tide Water Associated Oil Company the principal sum of $18,198.95, plus the additional sum of $804.93 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(4) From defendant Union Oil Company of California the principal sum of $47,002.38, plus the

additional sum of $14,337.63 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(5) From defendant Continental Oil Company the principal sum of $231,523.46, plus the additional sum of $31,499.30 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(6) From defendant Seaboard Oil Company of Delaware the principal sum of $224,922.81, plus the additional sum of $29,935.18 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(7) From defendant Honolulu Oil Corporation the principal sum of $35,107.71, plus the additional sum of $4,162.09 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(8) From defendant Standard Oil Company of Texas the principal sum of $35,107.70, plus the ad-

ditional sum of $4,162.08 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(9) From defendant Pacific Western Oil Corporation the principal sum of $49,109.17, plus the additional sum of $3,674.51 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(10) From defendant Pioneer Kettleman Company the principal sum of $10,536.93, plus the additional sum of $708.87 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(11) From defendant George F. Getty, Inc. the principal sum of $3,951.47, plus the additional sum of $634 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(12) From defendant Belmont Investment Company and Cynthia Beal, Neil S. McCarthy, and A.

Calder Mackay as Trustee of said Belmont Investment Company, a Corporation in Process of Dissolution, the principal sum of $30,977.39, together with interest thereon at the rate of seven per cent per annum from the date hereof.

(13) From defendant Ervin S. Armstrong the principal sum of $36,362.47, plus the additional sum of $3,102.64 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

(14) From defendants Carrie Estelle Doheny, Lucy Smith Battson and Los Nietos Company the principal sum of $23,949.50, plus the additional sum of $1,909.57 by way of interest thereon or upon some part thereof at the rate of four per cent per annum from the date of suit to the date hereof, together with interest upon each of said sums at the rate of seven per cent per annum from the date hereof.

V.

It is further Ordered and Adjudged that plaintiff have and recover its costs herein from the defendants named in paragraph IV hereof, the same to be taxed by the Clerk of this Court and to be pro-rated among the said several defendants by said Clerk on the basis of the amounts of principal for which said defendants are respectively indebted to plaintiff as specified in said paragraph IV. Said costs are taxed at $294.81 and are pro-rated among the defendants as follows:

General Petroleum Corporation of California	$73.35
Shell Oil Company, Inc.	11.63
Tide Water Associated Oil Company	5.12
Union Oil Company of California	13.21
Continental Oil Company	65.06
Seaboard Oil Company of Delaware	63.20
Honolulu Oil Corporation	9.86
Standard Oil Company of Texas	9.86
Pacific Western Oil Corporation	13.80
Pioneer Kettleman Company	2.96
George F. Getty, Inc.	1.11
Belmont Investment Company and Its Trustees	8.70
Ervin S. Armstrong	10.22
Carrie Estelle Doheny, Lucy Smith Battson and Los Nietos Company	6.73

Dated this 25th day of February, 1947.

/s/ C. E. BEAUMONT
United States District Judge

[Endorsed]: (Exhibit A) Judgment Lodged Feb. 6, 1947. Filed and Entered Feb. 25, 1947.

[Endorsed]: Filed Oct. 12, 1955.

[Title of District Court and Cause.]

ADDENDUM TO STATEMENT OF AGREED FACTS

It is hereby Stipulated and Agreed by and between the parties hereto by their respective counsel as follows:

I.

That the paragraph commencing at line 19 of page 8 of the Statement of Agreed Facts entered into betweeen the parties hereto on August 17, 1955, is amended to read as follows:

"During the period of time involved in this litigation, that is from July 1, 1931 to August 29, 1935, defendant Honolulu Oil Corporation prepared or caused to be prepared on its behalf, and defendant's predecessors in interest prepared or caused to be prepared on their behalf, and submitted to said Frank Kennedy and the plaintiffs herein, monthly statements of the royalties due said Frank Kennedy for the month covered by each such statement, and each month delivered such statement to said Frank Kennedy, accompanied by a check in the amount of such royalties shown to be due for such month; upon the receipt of each such royalty statement and check, Frank Kennedy wrote a letter to the corporation sending such statement and check, stating that by accepting such check he did not wish to be deemed to have agreed to its correctness; that after mailing such letter, each such check was cashed by Frank Kennedy. Such monthly royalty statements

were in the form of Exhibit "EE" to the Statement of Agreed Facts, and such letters sent by Frank Kennedy upon the receipt of the monthly royalty statements and checks were in the form of Exhibit "HH" attached to the Addendum to Statement of Agreed Facts."

II.

That paragraph XVI of said Statement of Agreed Facts is amended to read as follows:

"XVI.

"This Statement of Agreed Facts, as amended by the Addendum to Statement of Agreed Facts, together with the exhibits contained in said file marked "Photostatic Copies of Exhibits 'A' to and including 'GG'," and together with Exhibit 'HH' attached to the Addendum to Statement of Agreed Facts, and the matters admitted by the pleadings, constitute all the material evidence in, and as well the only evidence that will be offered or used by any of the parties to this action, at any trial on the merits of this cause. Nothing herein contained shall be construed as a waiver by any of the parties hereto of their rights to review on appeal any question of law or of fact arising in this action."

Dated: November 11th, 1955.

/s/ PEDDER, FERGUSON & PEDDER,
Attorneys for Plaintiffs

/s/ HERBERT W. CLARK,
Attorney for Defendant

Of Counsel for Defendant:

/s/ Morrison, Foerster, Holloway, Shuman & Clerk

/s/ Alfred L. Gibson

[Endorsed]: Filed November 14, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

To the Defendant above named and to Messrs. Herbert W. Clark and Morrison, Foerster, Holloway, Shuman & Clark, its Attorneys:

You Will Please Take Notice, hereby given, that:

(a) Plaintiffs above named by and through their attorneys hereby move the Court for summary judgment in their favor; and

(b) on November 28, 1955, at the hour of 9:30 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, in the Law and Motion Department of the above-entitled Court, the Honorable George B. Harris presiding, the above named plaintiffs, by and through their undersigned counsel, will present this motion for summary judgment and will move the said Court to enter summary judgment in their favor in the above-entitled action;

in accordance with the provisions of Rule 56(a) and (c) of the Federal Rules of Civil Procedure, on the

ground that the pleadings and the Statement of Agreed Facts with Addendum thereto on file in said action, and the exhibits contained in the file of exhibits which is marked "Photostatic Copies of Exhibits A to and including GG," which is referred to in paragraph V of said Statement of Agreed Facts, show that the said plaintiffs are entitled to judgment as a matter of law.

Dated: November 17, 1955.

/s/ PEDDER, FERGUSON & PEDDER,
Attorneys for Plaintiffs

Acknowledgment of Service attached.

SUMMARY JUDGMENT

This cause having come on for hearing before this Court on November 28, 1955, on the cross-motions of the plaintiffs and the defendant for summary judgment, the said hearing having been specially set for said date, and the said motions having been argued by Kenneth Ferguson, Esq., appearing on behalf of plaintiffs Katharine H. Kennedy and Mark C. Elworthy, and Herbert W. Clark, Esq., appearing for defendant Honolulu Oil Corporation;

And it appearing from the pleadings, exhibits, papers and records on file heren, filed in support of said motion, and from the Statement of Agreed Facts and Addendum thereto on file herein, that no controverted issue of fact remains to be tried by this Court as to whether so much of plaintiffs' complaint and each cause of action thereof as pertains or relates to the period prior to November 21, 1946,

is barred by the applicable statutes of limitations of the State of California;

And it appearing to the Court as a matter of law that so much of said cause of action and each count thereof as pertains or relates to the period of time prior to November 21, 1946, is not and are not barred by the applicable statutes of limitations of the State of California;

It Is Hereby Ordered, Adjudged and Decreed that plaintiffs Katharine H. Kennedy and Mark C. Elworthy, executors of the will of Frank Kennedy, deceased, have judgment against defendant Honolulu Oil Corporation in the sum of $9,519.11 with interest thereon from the period August 29, 1935 to March 30, 1946, at the rate of .....%, and with interest thereon at the rate of 7% from March 30, 1946 to date of judgment.

Dated: ....., 1955.

.....

Judge of the U. S. District Court

[Endorsed]: Filed November 17, 1955.

[Title of District Court and Cause.]

MEMORANDUM AND ORDER

Both parties have moved for summary judgment upon an agreed statement of fact. Both parties agree that there are no material facts in contest, and that the only issues are questions of law arising from the stipulated facts. The case is therefore

ripe for decision by summary judgment under Rule 56 F.R.C.P.

This case is a companion case to Kennedy vs. Seaboard Oil Company of Delaware, Civil No. 22469-R, and is based on substantially the same factual situation and with the identical questions of law. In the Seaboard Oil Company case Judge Harris in ruling on a motion to dismiss decided against defendant's main point by declaring that action not barred by the statute of limitations. His decision is reported in 99 F. Supp. 730. In the same case on motion for summary judgment Judge Goodman concurred in the decision of Judge Harris, and awarded judgment to the plaintiff without interest. He determined the interest question adversely to the contention of plaintiff.

Since the only material difference between the Seaboard Oil Company case and the case at bar is the name of the defendant, and since Seaboard was previously decided by this Court, rules of comity require a similar decision in this case. This Court adopts the rulings of Judge Harris and Judge Goodman in the Seaboard case, and awards judgment to the plaintiffs. Paragraphs XIV and XV of the Statement of Agreed Facts in this case provide:

"XIV.

"If the Court shall, upon the evidence agreed to by the parties in this Statement of Agreed Facts and the matters admitted by the pleadings, find that the claim of plaintiffs is barred by any applicable

statute of limitations, then plaintiffs' claim for said sum of $9,519.11 shall be denied and defendant shall have judgment herein.

XV.

"Conversely, if the Court shall, upon the evidence agreed to by the parties in this Statement of Agreed Facts and the matters admitted by the pleadings, find that plaintiffs' claim is not barred by any applicable statute of limitations, then plaintiffs' claim for said sum of $9,519.11 shall be allowed, and plaintiffs shall have judgment against defendant in satisfaction of the accounting prayed for in plaintiffs' complaint, for said principal sum of $9,519.11. In the event that plaintiffs shall so have judgment against defendant as provided in the preceding paragraph of this Statement of Agreed Facts it is understood and agreed that this Statement does not cover the allowance or disallowance of interest thereon, and that:

"(a) plaintiffs shall be free to urge the allowance of interest upon the principal amount of said judgment, or any part thereof, at such rate and in such manner as they shall deem proper; and

"(b) defendant shall be free to resist the allowance of interest in whole or in part, as it may deem proper."

Judgment will be entered for plaintiffs in the sum of $9,519.11, without interest to the date of judgment.

Counsel for plaintiffs shall present an order accordingly.

Dated: December 9, 1955.

/s/ OLIVER J. CARTER,
United States District Judge

[Endorsed]: Filed December 9, 1955.

In the District Court of the United States, Northern District of California, Southern Division

No. 30191

KATHARINE H. KENNEDY and MARK C. ELWORTHY, Executors of the will of Frank Kennedy, deceased, Plaintiffs,

vs.

HONOLULU OIL CORPORATION, a corporation, Defendant.

SUMMARY JUDGMENT

This cause having come on for hearing before this Court on November 28, 1955, on the cross-motions of the plaintiffs and the defendant for summary judgment, the said hearing having been specially set for said date, and the said motions having been argued by Kenneth Ferguson, Esq., appearing on behalf of plaintiffs Katharine H. Kennedy and Mark C. Elworthy, and Herbert W. Clark, Esq., appearing for defendant Honolulu Oil Corporation; And it appearing from the pleadings, exhibits, papers and records on file herein, filed in support of said motion, and from the Statement of Agreed Facts and Addendum thereto on file herein, that no

controverted issue of fact remains to be tried by this Court as to whether so much of plaintiffs' complaint and each cause of action thereof as pertains or relates to the period prior to November 21, 1946, is barred by the applicable statutes of limitations of the State of California;

And it appearing to the Court as a matter of law that so much of said cause of action and each count thereof as pertains or relates to the period of time prior to November 21, 1946, is not and are not barred by the applicable statutes of limitations of the State of California;

It Is Hereby Ordered, Adjudged and Decreed that plaintiffs Katharine H. Kennedy and Mark C. Elworthy, executors of the will of Frank Kennedy, deceased, have judgment against defendant Honolulu Oil Corporation in the sum of $9,519.11 without interest to the date of judgment, and for its costs and disbursements incurred in the above-entitled cause in the amount of $18.40.

Dated: December 16, 1955.

/s/ OLIVER J. CARTER,
United States District Judge

Approved as to form, as provided by Rule 5 (d), FRCP, and receipt of a copy is hereby acknowledged this 14th day of December, 1955.

/s/ HERBERT W. CLARK,
Attorney for Defendant

[Endorsed]: Filed December 16, 1955.

Dated: December 9, 1955.

/s/ OLIVER J. CARTER,
United States District Judge

[Endorsed]: Filed December 9, 1955.

In the District Court of the United States, Northern District of California, Southern Division

No. 30191

KATHARINE H. KENNEDY and MARK C. ELWORTHY, Executors of the will of Frank Kennedy, deceased, Plaintiffs,

vs.

HONOLULU OIL CORPORATION, a corporation, Defendant.

SUMMARY JUDGMENT

This cause having come on for hearing before this Court on November 28, 1955, on the cross-motions of the plaintiffs and the defendant for summary judgment, the said hearing having been specially set for said date, and the said motions having been argued by Kenneth Ferguson, Esq., appearing on behalf of plaintiffs Katharine H. Kennedy and Mark C. Elworthy, and Herbert W. Clark, Esq., appearing for defendant Honolulu Oil Corporation; And it appearing from the pleadings, exhibits, papers and records on file herein, filed in support of said motion, and from the Statement of Agreed Facts and Addendum thereto on file herein, that no

controverted issue of fact remains to be tried by this Court as to whether so much of plaintiffs' complaint and each cause of action thereof as pertains or relates to the period prior to November 21, 1946, is barred by the applicable statutes of limitations of the State of California;

And it appearing to the Court as a matter of law that so much of said cause of action and each count thereof as pertains or relates to the period of time prior to November 21, 1946, is not and are not barred by the applicable statutes of limitations of the State of California;

It Is Hereby Ordered, Adjudged and Decreed that plaintiffs Katharine H. Kennedy and Mark C. Elworthy, executors of the will of Frank Kennedy, deceased, have judgment against defendant Honolulu Oil Corporation in the sum of $9,519.11 without interest to the date of judgment, and for its costs and disbursements incurred in the above-entitled cause in the amount of $18.40.

Dated: December 16, 1955.

/s/ OLIVER J. CARTER,
United States District Judge

Approved as to form, as provided by Rule 5 (d), FRCP, and receipt of a copy is hereby acknowledged this 14th day of December, 1955.

/s/ HERBERT W. CLARK,
Attorney for Defendant

[Endorsed]: Filed December 16, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Honolulu Oil Corporation, a corporation, the defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that part of the Summary Judgment entered in this action on December 16, 1955, which awards to plaintiffs judgment in the sum of $9,519.11, and which adjudges that so much of plaintiffs' cause of action or claim and each count thereof as pertains or relates to the period of time prior to November 21, 1946, is not and are not barred by the applicable statutes of limitations of the State of California.

Dated: January 16, 1956.

/s/ HERBERT W. CLARK,
Attorney for Appellant, Honolulu Oil Corporation

[Endorsed]: Filed January 16, 1956.

[Title of District Court and Cause.]

UNDERTAKING FOR COSTS ON APPEAL

Whereas, Honolulu Oil Corporation, a Corporation, Defendant and appellant in the above entitled action, has appealed to the United States Court of Appeals for the Ninth Circuit from a judgment

made and entered against it in the District Court of the United States for the Northern District of California, Southern Division, in favor of the Plaintiffs in said action, on the 16th day of December, 1955, and

Whereas, the said appellant is required to give an undertaking for costs on appeal as hereinafter conditioned,

Now, Therefore, Hartford Accident and Indemnity Company of San Francisco, California, in consideration of the premises, hereby undertakes on the part of the said appellant and acknowledges itself bound to the said Plaintiffs in the sum of Two Hundred Fifty and No/100 Dollars ($250.00) that the said appellant will pay all costs which may be adjudged against it on said appeal, or on a dismissal thereof, and such costs as the Appellate Court may award if the judgment be modified, not exceeding, however, the sum of Two Hundred Fifty and No/100 Dollars ($250.00).

It Is Further Stipulated as a part of the foregoing undertaking that in case of the breach of any condition thereof, the above entitled District Court may, upon notice to the Surety of not less than 10 days, proceed summarily in said proceedings to ascertain the amount which the said surety is bound to pay on account of such breach and render judgment therefore against the said surety and award execution thereof.

Signed, sealed and dated this 16th day of January, 1956.

[Seal] /s/ HARTFORD ACCIDENT AND INDEMNITY COMPANY,

/s/ By TREVOR R. LEWIS,
Attorney-in-Fact

Notary Public's Certificate attached.

[Endorsed]: Filed January 16, 1956.

[Title of District Court and Cause.]

STIPULATION DISPENSING WITH BONDS ON APPEAL

It Is Hereby Stipulated by and between the parties hereto, through their respective attorneys, that the bonds on appeal under Rules 73(c) and 73(d) of the Federal Rules of Civil Procedure may be dispensed with in connection with defendant's appeal to the United States Court of Appeals for the Ninth Circuit from the judgment entered herein on December 16, 1955, and the defendant is hereby relieved from the necessity of filing any such bonds.

Dated: January 12, 1956.

/s/ PEDDER, FERGUSON & PEDDER,
Attorneys for Plaintiffs

/s/ HERBERT W. CLARK,
Attorney for Defendant

So ordered this 16 day of January, 1956.

/s/ OLIVER J. CARTER,
Judge of the United States
District Court

[Endorsed]: Filed January 16, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant:

Excerpt from Docket Entries.

Complaint.

Answer of Defendant.

Statement of Agreed Facts, with exhibits attached.

Notice and Motion by Defendant for Summary Judgment, with copy of proposed judgment attached.

Affidavit of Herbert W. Clark, with copy of Judgment from Southern District of California attached.

Addendum to Statement of Agreed Facts, with

copy of letter to Pacific Western Oil Company attached.

Notice and Motion by Plaintiffs for Summary Judgment, with copy of proposed judgment attached.

Memorandum and Order of Court for Judgment for Plaintiff.

Summary Judgment.

Notice of Appeal.

Bond on Appeal.

Stipulation Dispensing with Bonds on Appeal.

Appellant's Designation of Record on Appeal.

Statement of Points Upon Which Appellant Intends to Rely on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 21st day of February, 1956.

[Seal] /s/ C. W. CALBREATH,
Clerk
/s/ By MARGARET P. BLAIR,
Deputy Clerk

[Endorsed]: No. 15049. United States Court of Appeals for the Ninth Circuit. Honolulu Oil Corporation, Appellant, vs. Katharine H. Kennedy and Mark C. Elworthy, Executors of the Will of Frank Kennedy, deceased, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: February 28, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15049

HONOLULU OIL CORPORATION, a corporation, Appellant,

vs.

KATHARINE H. KENNEDY and MARK C. ELWORTHY, Executors of the Will of Frank Kennedy, deceased, Appellees.

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY

The points upon which appellant intends to rely on this appeal are:

1. The Court below erred in adjudging that so much of appellees' cause of action or claim and each count thereof as pertains or relates to the

period of time prior to November 21, 1946, is not and are not barred by the applicable statutes of limitations of the State of California.

2. The Court below erred in holding that a relationship, or any relationship, of co-tenancy or co-adventure existed between Frank Kennedy, or any of the appellees herein, on the one hand, and appellant, or any of its predecessors in interest, on the other hand.

3. The Court below erred in holding that there is or was any confidential relationship, or any fiduciary relationship, existing between Frank Kennedy, or any of the appellees herein, on the one hand, and appellant, or any of its predecessors in interest, on the other hand.

4. The Court below erred in holding that any relationship of trust and confidence, or trust or confidence, existed between Frank Kennedy, or any of the appellees herein, on the one hand, and appellant, or any of its predecessors in interest, on the other hand.

5. The Court below erred in awarding appellees damages in the sum of $9,519.11, or in any sum whatsoever.

Dated: February 27th, 1956.

/s/ HERBERT W. CLARK,
Attorney for Appellant Honolulu Oil Corporation

Acknowledgment of Service attached.

[Endorsed]: Filed Mar. 1, 1956. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF RECORD

Pursuant to Rule 17(6) of the Rules of the United States Court of Appeals for the Ninth Circuit, appellant Honolulu Oil Corporation designates as material to the consideration of this appeal the following portions of the record, proceedings and evidence:

1. Complaint.

2. Appellant's Answer to Complaint.

3. Statement of Agreed Facts.

4. Photostatic copies of Exhibits A to and including GG, accompanying said Statement of Agreed Facts.

5. Appellant's Notice of Motion and Motion for Summary Judgment.

6. Affidavit of Herbert W. Clark.

7. Addendum to Statement of Agreed Facts.

8. Appellees' Notice of Motion and Motion for Summary Judgment.

9. Memorandum and Order of the Court below of December 9, 1955.

10. Summary Judgment entered by the Court below on December 16, 1955.

11. Notice of Appeal filed on January 16, 1956.

12. Stipulation Dispensing with Bonds on Appeal filed on January 16, 1956.

13. Bond for Costs on Appeal filed on January 16, 1956.

14. Designation of Record on Appeal.

Dated: February 27th, 1956.

/s/ HERBERT W. CLARK,
Attorney for Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed Mar. 1, 1956. Paul P. O'Brien, Clerk.